

## Message Text

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ORIGIN ERDA-07

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FM SECSTATE WASHDC

TO AMEMBASSY BONN PRIORITY

INFO USMISSION EC BRUSSELS PRIORITY

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E.O. 11652:

TAGS: TECH

SUBJECT: ERDA/BMFT GAS-COOLED REACTOR AGREEMENT

1. BMFT DRAFT GCR AGREEMENT DATED JULY 9 CARRIED TO UNITED STATES BY SCHMIDT-KUESTER OF BMFT AND DISCUSSED WITH ERDA OFFICIALS IN WASHINGTON JULY 15. THIS DRAFT BEING POUCHED TO EMBASSY SEPARATELY.

2. EMBASSY REQUESTED TO FORWARD TO DAEUNERT OF BMFT FOLLOWING ERDA COMMENTS AND SUGGESTED AMENDMENTS TO BMFT DRAFT OF JULY 9:

PREAMBLE. CHANGE "GCBR" TO "GCFR" IN SECOND PARAGRAPH.  
REASON: EDITORIAL.

ARTICLE 1. CHANGE THIRD SENTENCE TO READ: "THIS COOPERATION MAY ALSO LEAD TO JOINT PLANNING, CONSTRUCTION, OPERATION AND UTILIZATION OF EXPERIMENTAL AND DEMONSTRATION TYPE FACILITIES AS MAY BE AGREED IN THE FUTURE."  
REASON: CLARITY.

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ARTICLE 2. IN PARAS 3, 4, 5 AND 6, INSERT THE PHRASE  
'PROTOTYPE AND DEMONSTRATION" BEFORE THE WORD 'FACILITIES".  
REASON: COMPLETENESS.

ARTICLE 4. CHANGE ARTICLE 4 TO READ AS FOLLOWS:

"1. IT IS RECOGNIZED BY THE PARTIES THAT THERE  
ARE ORGANIZATIONAL DIFFERENCES IN THEIR RESPEC-  
TIVE PROGRAMS, AND THAT BMFT MAY IMPLEMENT THIS  
AGREEMENT THROUGH A GCR DEVELOPMENT COMPANY,  
WHICH MAY ALSO SERVE ON BEHALF OF BMFT AS THE  
FOCAL POINT FOR COMMUNICATION AND COORDINATION  
FOR THE ERDA/BMFT GCR RESEARCH AND TECHNOLOGY  
EXCHANGE. ERDA MAY IMPLEMENT THIS AGREEMENT,  
IN WHOLE OR IN PART, THROUGH ITS CONTRACTORS  
AND SUBCONTRACTORS. IN THE EVENT THAT ANY OR  
ALL OF THE COOPERATIVE ACTIVITIES UNDER THIS  
AGREEMENT ARE IMPLEMENTED BY A CONTRACTOR,  
SUBCONTRACTOR OR GCR DEVELOPMENT COMPANY, AS  
CONTEMPLATED ABOVE, SUCH IMPLEMENTATION SHALL  
IN ALL RESPECTS BE IN ACCORDANCE WITH THE  
PROVISIONS OF THIS AGREEMENT.

"2. ENTITIES OF OTHER COUNTRIES WHICH BECOME  
PARTICIPANTS IN THE GCR PROGRAM OF THE FEDERAL  
REPUBLIC OF GERMANY MAY THEN PARTICIPATE IN  
THIS AGREEMENT ON TERMS TO BE AGREED BY THE  
PARTIES.

"3. BMFT AND ERDA AGREE THAT THE FRENCH CEA HAS THE  
OPTION TO JOIN THIS AGREEMENT ON TERMS TO BE  
AGREED BY THE PARTIES."

REASONS: 1. THE SUBSTANCE OF PARAS 1 AND 3 OF THE ABOVE  
ARTICLE 4 WAS AGREED DURING THE JULY 15  
ERDA/BMFT MEETING.

2. PARA 2 OF THE ABOVE ARTICLE 4 HAS BEEN  
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DRAFTED TO RECOGNIZE THE POSSIBILITY THAT  
ENTITIES OF OTHER COUNTRIES, NOT YET  
IDENTIFIED BY BMFT, MAY SUPPORT AND  
PARTICIPATE IN THE FRG GCR PROGRAM IN A  
MANNER ANALOGOUS TO THE DUTCH-BELGIAN  
RELATIONSHIP TO THE FRG LMFBR PROGRAM.

3. TWO NEW SENTENCES HAVE BEEN ADDED TO PARA 1

OF ARTICLE 4. WHILE ERDA IS AGREEABLE TO  
HAVING BMFT IMPLEMENT THIS AGREEMENT  
THROUGH A GCR DEVELOPMENT COMPANY, ERDA

ISHES TO HAVE A SIMILAR RIGHT TO IMPLEMENT THE  
AGREEMENT THROUGH ITS OWN CONTRACTORS AND SUBCONTRACTORS.  
MOREOVER, ERDA WISHES THAT THE COMPANIES, CONTRACTORS,  
OR SUBCONTRACTORS WHICH MAY IMPLEMENT THIS AGREEMENT  
SHALL BE BOUND BY THE TERMS OF THE AGREEMENT. THIS  
PROVISION IS INTENDED, FOR EXAMPLE, TO PASS REQUIREMENTS  
FOR PROTECTION OF PRIVILEGED INFORMATION THROUGH THE  
GOVERNMENTAL PARTIES TO THE INDUSTRIAL PARTICIPANTS,  
WITHOUT LOSING ANY OF THE FULL FORCE AND EFFECT OF THE  
AGREEMENT.

ARTICLE 5. CHANGE "AMERICAN" TO "UNITED STATES."  
REASON; EDITORIAL.

ARTICLE 7. ERDA WOULD PREFER TO RESTORE TO PARA 4  
THE WORDS "BUT ACQUIRED BY EITHER PARTY PRIOR TO, OR  
OUTSIDE, THE COURSE OF THESE ACTIVITIES, AND" WHICH  
APPEARED IN EARLIER VERSIONS OF THE DRAFT AGREEMENT BUT  
WHICH WAS DELETED BY BMFT IN THE JULY 9 VERSION. IT  
IS NOTED THAT THESE WORDS APPEAR IN THE ERDA/BMFT LMFBR  
AGREEMENT.

ARTICLE 7. THE REASON FOR BMFT INSERTING THE PHRASE  
'AND OTHER GOVERNMENT FINANCED INSTITUTIONS' IN PARA  
5A IS UNDERSTOOD AS MEANS OF DELINEATING THE RELATION-  
SHIP BETWEEN BMFT AND KFA JUELICH. ERDA SUGGESTS A  
MORE ACCURATE FORMULATION FOR PARA 5A WOULD BE: "TO  
PERSONS WITHIN OR EMPLOYED BY THE RECEIVING PARTY, AND  
TO OTHER CONCERNED GOVERNMENT AGENCIES AND INSTITUTIONS  
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OF THE RECEIVING PARTY; AND."

ARTICLE 7. CHANGE PARA 5B TO READ AS FOLLOWS: "TO  
PRIME OR SUBCONTRACTORS OF THE RECEIVING PARTY FOR USE  
ONLY WITHIN THE TERRITORY OF THE RECEIVING PARTY AND  
WITHIN THE FRAMEWORK..." REASON: TO REINSERT THE  
WORDS: "WITHIN THE TERRITORY OF THE RECEIVING PARTY  
AND" WHICH APPEARED IN EARLIER VERSIONS OF THE DRAFT  
AGREEMENT BUT WHICH WERE DELETED BY BMFT IN THE JULY  
9 VERSION. IT IS NOTED THAT THESE WORDS APPEAR IN THE  
ERDA/BMFT LMFBR AGREEMENT.

ARTICLE 10. CONCERNING THE WORDS "IN THE COURSE OF  
OR" IN FIRST SENTENCE OF ARTICLE 10, THIS FORMULATION  
IS REQUIRED BY OUR STATUTES, AND APPEARS IN THE ERDA/

BMFT AGREEMENT. FOR THESE REASONS, IT SHOULD NOT BE DELETED.

ARTICLE 10, PARA 1A(3). AS WRITTEN, THIS CLAUSE WOULD GIVE BMFT RIGHT TO CLAIM EUROPEAN COMMUNITY PATENTS FOR ITSELF. THIS WOULD BE A SUBSTANTIAL MODIFICATION OF RIGHTS ORIGINALLY PROPOSED IN THE AGREEMENT, AS WELL AS A DEVIATION FROM THE PATENT ARTICLE OF THE ERDA/BMFT AGREEMENT, AND IS THEREFORE NOT ACCEPTABLE.

ARTICLE 10. THE INTENT OF PARA 1D OF THE JULY 9 DRAFT IS UNCLEAR. WOULD IT APPLY ONLY TO PARA 1C, OR TO PARAS 1A AND 1B AS WELL? IS IT INTENDED TO APPLY TO SUB-LICENSES AS WELL AS LICENSES? WE WOULD WELCOME CLARIFICATION OF BMFT RATIONALE, TO ASSIST IN POSSIBLE FUTURE NEGOTIATION OF THIS CLAUSE.

ARTICLE 14. „ARTICLE 6" SHOULD BE CHANGED TO READ "ARTICLE 7". REASON: EDITORIAL.

ARTICLE 14. INSERT THE FOLLOWING SENTENCE AT END OF PARA 2: "ERDA HAS A RIGHT TO IMPLEMENT THIS AGREEMENT, IN WHOLE OR IN PART, THROUGH ITS INDUSTRIAL CONTRACTORS AND SUBCONTRACTORS, AS STATED IN ARTICLE 4.; REASON: TO BE CONSISTENT WITH CHANGES PROPOSED FOR ARTICLE 4.

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SIGNATURE. DELETE THE WORD "FOR" FROM THE ERDA SIGNATURE BLOCK. REASON: CONSISTENCY WITH BMFT SIGNATURE BLOCK.

3. EMBASSY SHOULD CONVEY TO DAEUNERT CURRENT ERDA VIEWS ON REPROCESSING AS EXPLAINED TO SCHMIDT-KUESTER JULY 15: ARTICLE 2 OF DRAFT GCR AGREEMENT PROVIDES THAT AREAS OF COOPERATION MAY INCLUDE, INTER ALIA, WORK ON REPROCESSING AND REFABRICATION. HOWEVER, USG HAS HIGH LEVEL REVIEW UNDERWAY OF ITS NON-PROLIFERATION POLICIES, INCLUDING REPROCESSING, AND IMPLEMENTATION OF THIS PORTION OF PROPOSED GCR AGREEMENT MUST AWAIT RESULTS OF REVIEW AND DETERMINATION OF POLICY. KISSINGER

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